**PUBLIC PROSECUTOR**

**v.**

**WONG FOOK CHOY & ANOR.**

HIGH COURT MALAYA, KUALA LUMPUR
KC VOHRAH J
[FT CRIMINAL TRIAL NO. 9 OF 1985]
28 MARCH 1986

***CRIMINAL LAW AND PROCEDURE:*** *Dangerous drug - First accused and 2nd offender prosecuted under s. 39B(1)(a) of Dangerous Drugs Act 1952 - Offence punishable under s. 39B(2) of said Act read with s. 34 of Penal Code - At end of prosecution case 2nd offender acquitted by Court - Amended charge against 1st accused - Whether defence had cast any reasonable doubt on prosecution case.*

The 1st accused and the 2nd offender (Rita Lim Lee May) were prosecuted jointly for trafficking in a dangerous drug, to wit, 125.71 grammes of heroin, in contravention of s. 39B(1)(a) of the Dangerous Drugs Act 1952, thereby committing an offence punishable under s. 39B(2) of the said Act read with s. 34 of the Penal Code.

At the close of the case of the prosecution the Court found no evidence of complicity against the 2nd offender for an offence under s. 39B read with s. 34 of the Penal Code and accordingly acquitted her. The Court then amended the charge against the 1st accused.

**Held:**

**[1]** Considering all the evidence in the totality of the evidence of both the prosecution and the defence and considering the learned Judge's personal observation of the 1st accused's hesitant replies and of his looking down ever so often when he gave his replies, the Court could not find that the defence had cast any reasonable doubt on the compelling and consistent case for the prosecution that the offence under the amended charge had been proved.

**[2]** The 1st accused was caught red handed, with the heroin under very incriminating circumstances. The Court accordingly found him guilty on the amended charge and convicted him.

*[1st accused sentenced to death.]*

**Cases referred to:**

*State v. Mahindra Nath Das [1960] AIR Cal 183*
*Harchand Singh & Ors. v. State of Haryana [1974] AIR SC 344*
*Lim Yow Choon v. PP [1972] 1 MLJ 205*
*Chee Chiew Heong v. PP [1981] CLJ (Rep) 115*

**Legislation referred to:**

Dangerous Drugs Act 1952, s. 37(d), (da), 39B
Evidence Act 1950, ss. 17(2), 30
Penal Code, s. 34

*For the public prosecutor - Tan Hock Chuan, DPP*
*For the 1st accused - Karpal Singh; M/s. Karpal Singh & Co.*
*For the 2nd offender - Mah Weng Kwai; M/s. Mah Weng Kwai & Associates*

**JUDGMENT**

**KC Vohrah J:**

The first accused and the second offender were prosecuted before me upon the following charge:

> That you jointly on 18.10.84 at about 8.20 p.m. in front of shop-house No. 107, Jalan Sibu, Taman Wahyu, Jalan Ipoh, Kuala Lumpur, in the Federal Territory, did traffic in a dangerous drug, to wit, 125.71 grammes of heroin, in contravention of s. 39B(1)(a) of the Dangerous Drugs Act 1952 and you have thereby committed an offence punishable under s. 39B(2) of the same read with s. 34 of the Penal Code.

Briefly the facts adduced by the prosecutor were that the first accused was seen coming down the stairs leading from the first floor of a house to the ground floor. He was followed by the second offender Rita Lim. He then removed his motor cycle, which was parked on the stairs, on to the five foot way and parked it there. The second offender assisted him in the removal. The first accused looked around and stood at the place for about 2 or 3 minutes after which he squatted down on the five foot way near the motor cycle. He then lifted a dustbin cover from a dug-out spot on the road. He subsequently used a stick to dig at the dug-out spot. The second offender was squatting next to the first accused. After digging for a while the first accused then lifted a red plastic bag from the dug-out spot. At that juncture a police party in civilian clothes, which was lying in ambush, came out of hiding and a warning, "Polis! Jangan lari!" was shouted out. Both the first accused and the second offender ran away in opposite directions. And the first accused was seen to throw away the red plastic bag. Both of them were, however, apprehended and the red plastic bag recovered. The plastic bag contained 125.71 grammes of heroin. As part of the prosecution's case, a cautioned statement made by the first accused was admitted without challenge. In that statement the accused denied that he fished out the plastic bag. He admitted lifting the dustbin cover as he wanted to use it to unscrew the small compartment of his motor cycle to take out a screw driver; he needed the screw driver to remove a slippery rubber piece attached to his motor cycle leg rest. He also said that the heroin that was recovered belonged to his friend Ah Heng; Ah Heng had given it to the second offender to hide it in the hole.

The witnesses who narrated what took place during and after the ambush near the shophouse were ASP (then Inspector) Khalid bin Abu Bakar, PW1, Detective Corporal Mohd. Saad Sadkun, PW3, and Detective Corporal Azizan bin Ahmad, PW4. PW1 witnessed the entire events which took place. PW3 and PW4 peeping through holes in a canvas in the back of a lorry managed only to see some of the events witnessed by PW1. ASP Khalid bin Abu Bakar, PW1, stated that on 18.10.84 at about 8 p.m. he and a police party laid an ambush in front of shophouse No. 107, Jalan Sibu, Taman Wahyu, Jalan Ipoh, Kuala Lumpur. He and the police party were in the back portion of the lorry which had been placed in front of the shophouse. The back of the lorry was covered with canvas and the canvas had holes through which he and some members of the party could observe the scene in front of them.

At about 8.20 p.m. PW1, peeping through a hole in the canvas, saw the first accused and the second offender come down the stairs of shophouse No. 107, PW3 and PW4 who were in the police party also saw both the first accused and the second offender coming down the stairs and they indicated that the second offender followed the first accused down the stairs.

PW1, as also PW4, then witnessed the first accused take down a motor cycle and park it on the five foot way in front of the shophouse. They both observed that the second offender assisted the first accused in taking down the motor cycle. The first accused was looking around him. PW1 and PW2 observed him stand near the motor cycle - PW1 saw him stand there for about two or three minutes - after which the first accused squatted down.

At this stage PW4 ceased his observation through a hole in the canvas but PW1 continued his observation.

PW1 saw the first accused squat down on the five foot way near the motor cycle and near a dustbin cover. He saw him lift a dustbin cover (P6) from the tarred road which had a dug-out spot and where the dustbin cover had been placed. PW1 then saw the first accused digging at the dug-out spot with a stick (P7) and then he saw the second offender squatting down.

PW1 next observed that that after digging at the spot with the stick for a short while the first accused lifted a red plastic bag (P4) from the dug-out spot.

PW1 stated that he then came out of his ambush position - he stood up and the first accused was then at the motor cycle; the first accused was holding the handle of the motor cycle and PW1 introduced himself as the police and said, "Jangan lari!" At this juncture the first accused threw the red plastic bag he was holding and started running. The second offender ran in the opposite direction. PW1 then chased after the first accused with Corporal Amiz and managed to catch him.

PW4 who had re-commenced observation of the scene saw the first accused holding a red plastic bag and standing up. PW4 stated that when PW1 identified himself, "Polis! Jangan lari!" he saw the first accused run a few steps from the motor cycle. He saw him throw the plastic packet and continue to run. He saw PW1 chase the first accused and he saw the second offender run in the opposite direction.

PW3 gave chase to the girl and caught her.

PW1 after apprehending the first accused brought him to the place where he threw the plastic packet and where the second offender had already been brought to. PW3 in his evidence said he caught the second offender after she had started to run and after apprehending her he brought her to the front of shophouse 107. PW1 continued that he then opened the plastic bag and found it to contain 5 newspaper bundles (P5 A, B, C, D & E), four of which had 20 plastic packets, each packet containing a brownish substance (P8 1-20, P9 1-20, P10 1-20, P11 1-20). The fifth bundle contained 8 plastic packets of a brownish substance (P12 1-8).

PW1 then took the first accused and the second offender to the first floor of shophouse 107 and searched the premises but found nothing incriminating. He called for a police photographer (PW2) who took photographs of the scene and the Exhibits (P2 A-I). PW1 then returned to his office and later in the night handed all the exhibits of the case, including the motor cycle to PW6, DSP (then ASP) Balbir Singh who was the Investigation Officer of the case.

DSP Balbir Singh (PW6) said he personally sent the 88 packets (P8 1-20, P9 1-20, P10 1-20, P11 1-20 and P12 1-8) found in the red plastic bag (P4), recovered at the scene, to a chemist in the Chemistry Department and after receiving a chemist report (P14) on the matter served copies of the report on both the first accused and the second offender. The chemist's report showed that the 88 packets contained 125.71 grammes of heroin.

PW6 also stated that he examined the tool compartment of motor cycle, WAT 3013, seized at the scene. He did not find a screw driver in the compartment.

On the facts adduced by the prosecution relating to the movements of the first accused and the second offender as observed by PW1, PW3 and PW4 while they were in ambush position, attempts were made through cross-examination to show that the area of the scene was dark but all the three witnesses testified that they could see the area because to the left of shophouse 107 (as one faced it) there was a mini market and light came from the area of the five foot way of the mini market. PW3 stated that the light came from a fluorescent light which was outside the mini market and he was able to observe the first accused. This matter of the area being sufficiently bright for observation was brought out during the re-examination of PW1 and PW3. And PW4 testified on this fact during cross-examination. And I had no reason to doubt their story.

Cross-examination was directed to show that not only did the 1st accused not pick the red plastic bag (P4) but he did not throw it either. It was put to PW1 that the police rushed at the first accused when he (the first accused) was picking up the dustbin cover and that PW1 gave chase when the first accused ran. PW1 denied the allegation and said he saw the first accused lift the plastic bag. When PW4 was cross-examined he stated that when he re-commenced his observation of the scene he saw the first accused hold a plastic bag and that he went to the spot when the accused threw the plastic bag. Both PW1 and PW4 under cross-examination firmly denied that the red plastic bag was found in the dug-out spot. Here again I had no reason to disbelieve their story.

There was, however, a photograph of the scene (P2D) which showed that the plastic bag containing heroin was lying in the dug-out spot. Counsel for the first accused cross-examined PW1, PW3 and PW4 on the presence of the red plastic bag containing heroin in the dug-out spot on the road as shown in photograph P2D. In P2D the said bag is shown next to an "X" mark made in blue ink on the photograph. The photographer, PW2, had made that mark to indicate the hole which he said was in the spot. Under cross-examination PW2 said he could not remember who had placed the plastic bag in the place (shown in the photograph) before the photograph was taken.

It will be noted that from the evidence of PW1 and PW4 that PW1 had contacted his office to summon the photographer, PW2, to the scene after the ambush had taken place. To my mind the photographs were merely to show the dug-out spot, the dustbin cover and where the first accused had fished out the red plastic bag. The plastic bag was placed near the hole marked "X" in P2D merely as a reconstruction of the scene. To read more into the photographs is not justifiable as the evidence of PW1, PW3 and PW4, even under cross-examination, was unshakeable to the effect that the red plastic bag was found on the five foot way in front of the shophouse No. 107; in fact PW1 and PW4 had seen the first accused throw it there.

To my mind, at the close of the case for the prosecution there was clear eye-witness testimony showing facts that a *prima facie* case of trafficking against the first accused had been made out. He was at the relevant date and time and place in the charge in possession of the red plastic bag and it contained 125.71 grammes of heroin and invoking s. 37(d) and (da), he, until the contrary is proved, is deemed to have known the nature of such drug and presumed to be trafficking in such drug. However in addition to the testimony of witnesses for the prosecution in the case of the first accused, a cautioned statement (P13) made by him to PW5 was admitted as part of the prosecution's case. In that statement the first accused exculpated himself of any complicity in the offence but implicated the second offender and

one Ah Heng. He admitted taking the motor cycle out of the shophouse, he admitted picking up the dustbin cover and he admitted running away and these aspects coincided with eye-witness testimony adduced in the prosecution's case and I can accept this story on these aspects. But in the face of strong and clear testimony of eye-witnesses which detailed a blow by blow account of what had transpired during the surveillance by the police and at the ambush which is not inherently incredible I cannot accept that portion of the cautioned statement exculpating himself and implicating the second offender and the one Ah Heng and that portion has to be considered when his defence is considered; but for its effect on the second offender that will be considered shortly in this decision when I discuss the prosecution's case against the second offender.

Against the second offender the facts were that she was seen coming down with the first accused. She assisted the first accused in removing a motor cycle from the stairs to the five foot way. She was seen squatting next to him when he started digging at the dug-out spot. And when the ambush party announced itself she ran. But it was not shown that she was conversing with the first accused or that she was doing anything which appeared incriminating in relation to the plastic bag containing heroin. On the evidence, save for a portion of the cautioned statement of the first accused which implicates her, I cannot on neutral facts find her intentionally acting in concert with the first accused and therefore implicated in the offence.

Now we come to the cautioned statement (P13) of the 1st accused which the prosecution relied on to rope in the second offender. As stated before it exculpates himself of any complicity in the offence. But his statement implicates the second offender by stating that one Ah Heng handed the 88 packets of heroin (which were seized by the police) to her and that Ah Heng had asked her to hide the heroin in the dug-out spot on the road.

As a matter of law can I use this portion of statement as evidence against her?

Under s. 30 of the Evidence Act 1950, when more persons than one are being tried jointly for the same offence, and a confession made by one of those persons affecting himself and some other of those persons is proved, the Court may take into consideration the confession as against the other person as well as against the person who makes the confession. Section 30 can be invoked if a confession is involved. What is a "confession"? Under s. 17(2), "(a) confession is an admission made at any time by a person accused of an offence,stating or suggesting the inference that he committed that offence."

Is the cautioned statement made by the first accused a confession? The answer is in the negative for the statement is self-serving and exculpatory and clearly s. 30 of the Evidence Act cannot be invoked against the second offender. Surely, as a matter of prudence such a statement should not be used against a co-accused as it is an exculpatory and unsworn statement and is not subject to cross-examination. Here it was used to fill a gap in the prosecution's case but it cannot be so used. I am fortified in this view by the case of *State v. Mahindra Nath Das* [1960] AIR Cal. 183 where Guha Ray J held, at p. 184, that a self-exculpatory statement of an accused cannot abe treated as a confession and can be used only as an admission as against the accused himself and it cannot be used as evidence at all against the other accused.

Thus at the close of the case of the prosecution I could find no evidence of complicity against the second offender, Rita Lim, for an offence under s. 39B read with s. 34 of the Penal Code and I accordingly acquitted her.

Since I had acquitted the second offender, I amended the charge against the first accused which reads as follows:

That you on 18 October 1984 at about 8.20 p.m. in front of shophouse No. 107, Jalan Sibu, Taman Wahyu, Jalan Ipoh, Kuala Lumpur, in the Federal Territory, did traffic in a dangerous drug, to wit, 125.71 grammes of heroin, in contravention of s. 39B(1)(a) of the Dangerous Drugs Act 1952 and you have thereby committed an offence punishable under s. 39B(2) of the same.

***Defence***

The first accused elected to give his evidence on oath. His was the only evidence adduced in the case for the defence.

In gist the first accused denied having anything to do with the 88 packets of heroin; he did not know of the existence of nor did he retrieve the red plastic bag containing the heroin.

He said that on the day in question, at about 8 p.m., he came down from the shophouse. He stayed on the top floor of the shophouse. Later Rita Lim followed him. He had wanted to send a cassette player to Kg. Batu in Jalan Ipoh for repair because it was defective. After he had come down he pushed his motor cycle out and parked it to one side along the five foot way just outside the stairs of the shophouse. He tried to start the motor cycle but could not. He then tried to open the tool compartment of the motor cycle but was unable to unscrew the nut as he did not have the tool for it. He wanted to take out "motor cycle tools" from the compartment in order to examine the spark plugs.

He testified that then he saw a dustbin cover nearby so he tried to break a small piece from the dustbin cover (similar to P6) to unscrew the nut. When he could not break off a piece he threw the dustbin cover away after which a group of persons jumped out from a lorry. He did not know what the matter was about and he tried to run away but he was caught by them. After he had been caught these persons stated they were the police. They took him to a place behind the motor cycle, about 10 feet away. The police searched the place which was the area shown in photograph P2A. They searched in the sand and found a packet in the sand and after that they took him upstairs to his room together with Rita Lim.

He said that then the police opened the packet and showed him 88 packets containing heroin. The police searched his room but could not find anything after which he was taken to the police station.

The first accused further testified that at the police station Rita Lim told him that it was one Ah Heng who had given the packets of heroin to her to put it in the sand where the police had subsequently found them.

The first accused added that he knew Ah Heng. At that time (i.e. time of his arrest) he had known him for about 1½ months. Ah Heng used to visit him in his room. When he came, his girl friend, Rita Lim was with him in the room. Ah Heng had told him that he worked in the market. Ah Heng would come to the room to smoke heroin and sometimes Ah Heng would give him some heroin to smoke.

The first accused denied that when the police party rushed towards him PW1 had shouted, "Polis! Jangan lari!" and he also denied having knowledge of the plastic bag of heroin.

It is necessary now to evaluate his evidence. It can be seen that his story is roughly similar to the story he gave to the recording officer, PW5, in his cautioned statement (P13). But his story has to be viewed in the totality of all the evidence adduced in this case.

The evidence adduced by the prosecution was clear and unambiguous. There was no break in the police surveillance of all the movements of the first accused from the time he came down with Rita Lim up to the time he threw the red packet of heroin and ran away. The area

was lit from a fluorescent lamp in an adjoining mini market and it cannot be said the police officers in the ambush party were hampered by darkness in their observation. PW1 saw all the movements. In fact the evidence of the first accused does not dispute PW1's story, corroborated by PW3 and PW4, that the first accused came down, removed his motor cycle and stood it on the five foot way. The first accused's story also coincides with the evidence of PW1 and PW4 regarding the picking up of a dustbin cover by the first accused. The departure from the prosecution's evidence was that while PW1 said he then saw him dig in the dug-out portion of the road with a stick (P7) and retrieve the red plastic bag (P4) containing heroin, on this crucial incriminating movements involving himself, the first accused denied his involvement. And he also denied holding the plastic bag which PW1 and PW4 testified they saw him hold. As also he denied the police shouting "Polis! Jangan lari!" and his running away. Why would PW1, PW3 and PW4 want to lie on these crucial matters? They had nothing to gain from lying. They were not shaken during cross-examination and I found them straight-forward and truthful. If they had wanted to lie, they could have lied about the involvement of Rita Lim who was with the first accused; they could have invented incriminating evidence against her instead of stating neutral facts about her movements as were observed by them. In the light of all these and of what I will be stating soon, the defence story sounds hollow.

It was argued by Mr. Karpal Singh that the cautioned statement (P13) being part of the prosecution's case and since it gives another version of the prosecution's story, I should acquit the first accused at the close of the prosecution's case. I would now have to reconsider the cautioned statement when I consider all of the evidence in the light of the defence. I shall now examine the case of *Harchand Singh & Ors. v. State of Haryana* AIR [1974] Supreme Court 344 which Mr. Karpal Singh cited. In that case the prosecution in support of its case examined two sets of eye- witnesses. The evidence of one set consisted of the testimony of three eye-witnesses who were not present at the time of the occurrence according to the fourth eye-witness who, according to the prosecution's case, was present with the deceased and at the time of the assault. This fourth witness was also shown to be an unreliable witness by the evidence by the prosecution. The Indian Supreme Court held that it was a case wherein one set of evidence condemned the other set leaving the Court with no reliable and trustworthy evidence upon which the conviction of the accused might be based. In the instant case, however, there were the sworn statements of police witnesses who gave one single account of what took place during and after the ambush and the account was not contradicted by any single prosecution witness. The witnesses were reliable and trustworthy and their account is only contradicted by the unsworn version of a story contained in the cautioned statement, P13, made by the first accused. It exculpates the maker, the first accused and the sole purpose of the prosecution in making it part of the prosecution's case was to implicate Rita Lim in the offence of drug trafficking though, as I have ruled, it cannot implicate her. Thus the principle in the case of *Harchand Singh* is not applicable. I have instead borne in mind the case of *Lim Yow Choon v. PP* [1972] 1 MLJ 205 where the Federal Court held that notwithstanding that a cautioned statement was part of the evidence for the prosecution and there were facts in the cautioned statement which appeared to contradict other parts of the evidence led by the prosecution, it was open to the trial Judge as a Judge of facts to assess the evidence and in so doing accept part of it and reject the rest.

I had stated earlier that the defence story is roughly similar to the version given in the cautioned statement of the accused. But it is not substantially similar. There are two material contradic-tions. The first relates to the very crucial matter relating to the motor cycle. In his testimony he said he could not start his motor cycle and he wanted to break a part of the

dustbin cover in order to use the broken part to unscrew the nut to the tool compartment so as to obtain tools therein to repair the spark plugs of his motor cycle. Yet in his cautioned statement, PW13, p. 2, lines 31 to 41, this appears:

> I then pushed the motor cycle WAT 3013 out of the house. Outside the house I realised that the rubber at the leg rest of the motor already worn off (sic) and it was very slippery as I could not put my foot on it. I decided to remove the rubber piece. I tried to open the small compartment of the motor cycle and take out the screw driver to remove the rubber piece around my motor cycle leg rest. I could not unscrew the screw fastened (sic) the small compartment. I saw a dustbin cover next to the place where I parked my motor cycle. I then picked up the dustbin cover as I wanted to use it as a screw driver to loosen the screw of the small compartment of my motor.

I could not accept the argument that the discrepancy arose because the cautioned statement was taken a long time ago. This statement in the cautioned statement is categorical on the reason for getting at the tool compartment; it was to get a screw driver to repair the rubber piece attached to the leg rest, not to repair the spark plugs and I find it difficult to believe he can forget a vital aspect of the story if it is true. In the light of the evidence of PW6, DSP Balbir Singh, who said he examined the tool compartment of the motor cycle and did not find a screw driver it is obvious the first accused had to rely on another story. I rejected both versions as fabrications of an over fertile mind. The other material contradiction related to the time he ran away. In his testimony he said that when he could not break a part off the dustbin cover he threw the cover away and after that a group of persons jumped out from the lorry and then he tried to run away. Yet in his cautioned statement he said, p. 2, lines 41 to 43:

> While I was picking up the dustbin cover, at that juncture I saw several men running towards me. I did not know what happened and tried to run away.

Again something the first accused should be certain of unless his stories were fabricated and again I regarded both the two versions as being false and untrue.

I am mindful of the case of *Chee Chiew Heong v. PP* [1981] CLJ (Rep) 115 where Chan J. held that the presumption in s. 37(d) of the Dangerous Drugs Act 1952 that the possession of a container in which a dangerous drug is found is deemed to be in possession of the drug is rebuttable and may be rebutted by a cautioned statement which formed part of the prosecution's case. But unlike that case where a packet of morphine was found beside the accused who appeared to be sleeping and where her cautioned statement indicated that she did not know the contents of the packet to be dangerous drug, here there is cumulative and overwhelming evidence forming part of the prosecution's case showing that the first accused was not a passive possessor but one who was guarded about prying eyes (when he looked around him) and who dug for and picked the red plastic bag containing the heroin.

When I considered the self-serving cautioned statement I weighed it against the whole of the prosecution's case and sworn evidence of the first accused. The material contradictions between his testimony and his cautioned statement stand out. I cannot accept, in the circumstances, those portions of his cautioned statement denying complicity in the offence. Nor could I accept his testimony on the same matters which in short is a mere denial of the offence as possibly rebutting the presumptions under s. 37(d) and (da) of the Dangerous Drugs Act having regard to all the circumstances.

Then again I could not accept his story, and this appears both in his testimony and in his cautioned statement, that he was only told by his girl friend, Rita Lim, at the office where they were detained, that one Ah Heng had handed her the 88 packets of heroin and had

asked her to hide the heroin at the spot where it was found. He said he did not know when Ah Heng handed the heroin to her. Under cross-examination he had stated that before the arrest he had known Rita for a few months and had lived with her in his room and they were very close. Yet she did not tell him earlier about the 88 packets of heroin. I find this story as being highly improbable and reject it as being untenable.

Considering all the evidence in the totality of the evidence of both the prosecution and the defence and considering my personal observation of the first accused's hesitant replies and of his looking down ever so often when he gave his replies I could not find that the defence had cast any reasonable doubt on the compelling and consistent case for the prosecution that the offence under the amended charge had been proved.

One other matter. Mr. Karpal Singh argued that in the cautioned statement mention was made of Ah Heng, with details of his whereabouts, being the owner of the heroin; yet, the police did not appear to have investigated Ah Heng's role in the matter and Ah Heng was not produced as a witness. He likened the cautioned statement to a notice in writing given by an accused person for the defence of alibi and on which the police should have investigated before prosecution and trial of the accused. He cited the case of *PP v. Lim Ah Bek* Penang High Court Trial No. 9/1980, where Gunn J had applied that proposition to the case he had tried. His Lordship held that a reasonable doubt had been raised in his mind as to whether he should draw the inference that the police did conduct investigations regarding the contents of the accused's statement and had found that there was no truth in what the accused in that case had told the officer recording her cautioned statement or whether an inference should be drawn that the police after investigations on that recorded statement found that what she, the accused, had told the recording officer was the truth. His Lordship drew the inference which was favourable to her, gave her the benefit of the doubt, and acquitted her. There were other reasons for the acquittal and the Public Prosecutor appealed against the acquittal and the Federal Court dismissed the appeal though no grounds of decision for the dismissal appear to be available. It has to be pointed out that in that case the investigation officer was not cross-examined as to whether he investigated the contents of the cautioned statement. Again in the instant case the accused was caught red handed, so to speak, with the heroin under very incriminating circumstances and I could see no reason why an adverse inference should be drawn on this aspect.

Accordingly I found the accused guilty on the amended charge and convicted him. I sentenced him to death.

Also found at [1986] 2 CLJ 263